

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MARTIN E. CARROLL,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12011
Trial Court No. 1KE-13-536 CI

MEMORANDUM OPINION

No. 6460 — May 10, 2017

Appeal from the Superior Court, First Judicial District,
Ketchikan, Trevor N. Stephens, Judge.

Appearances: Olena Kalytiak Davis, Attorney at Law,
Anchorage, for the Appellant. Donald Soderstrom, Assistant
Attorney General, Office of Criminal Appeals, Anchorage, and
Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge MANNHEIMER.

In 2013, Martin E. Carroll was charged with second-degree assault, fourth-degree assault, resisting arrest, and disorderly conduct. These charges arose from an

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

incident on New Year's Day 2013, during which Carroll assaulted his landlord and then assaulted a police officer who arrived on the scene.

These charges were ultimately resolved with a plea bargain: Carroll pleaded guilty to third- and fourth-degree assault, he agreed that he would receive a composite sentence of 1 year to serve, and he further agreed that one of his probation conditions would include the possibility of up to 6 months of residential treatment. In exchange, the State dismissed the other charges.

About six months after the superior court sentenced Carroll in accordance with this plea agreement, Carroll filed a petition for post-conviction relief. Carroll asserted that he had received ineffective assistance of counsel from the assistant public defender who represented him during the plea negotiations. Carroll asserted that his former attorney had failed to adequately investigate the case before negotiating the plea agreement, that the attorney had improperly pressured Carroll to accept the agreement, and that the attorney had otherwise provided Carroll with “[mere] pro forma representation”. In addition, Carroll asserted that his attorney had failed to adequately explain the consequences of the plea bargain: the rights he would be giving up, and the nature of the probation he was accepting.

The superior court received affidavits from both Carroll and his former attorney. Based on these affidavits, the court concluded that Carroll had failed to set forth a prima facie case of ineffective assistance of counsel, and the court therefore dismissed Carroll's petition for post-conviction relief. Carroll now appeals that decision.

Carroll's claim that his attorney failed to adequately investigate the case

With respect to Carroll's claim that his attorney failed to adequately investigate the case, Carroll asserted that his attorney (1) failed to take photographs of

the exterior of the property where the incident occurred, (2) failed to conduct background checks of the witnesses, and (3) failed to subpoena or otherwise request copies of the police officers' personnel records. Carroll also asserted that his attorney (4) failed to examine the shirt that Carroll had been wearing at the time of the incident. (Carroll claimed that his shirt was clean, and that this fact was inconsistent with the State's allegations that he had assaulted his landlord and the police.)

In her affidavit, Carroll's attorney stated that she met with Carroll several times to discuss the case, that she reviewed all of the State's pre-trial discovery with Carroll, that she talked to Carroll about the medical report evaluating the police officer's injuries, and that she discussed possible defenses with Carroll, as well as possible outcomes if the case went to trial — including her concern that a jury would find Carroll guilty. However, the attorney's affidavit did not respond directly to Carroll's four specific claims of inadequate investigation that we described in the preceding paragraph.

Carroll later submitted his own affidavit. In this affidavit, Carroll asserted that his attorney told him that she would take photographs of the crime scene, but that she never did. Carroll additionally claimed that he had asked his attorney to investigate the backgrounds of the police officers and the other witnesses, but that his attorney did not do so. Carroll further asserted that his shirt had been "pristine" after the incident, thus showing (according to Carroll) that the police reports of the struggle were "wildly inaccurate".

With regard to Carroll's complaint that his attorney failed to examine the shirt that Carroll had been wearing, the superior court found that Carroll had failed to present a *prima facie* case because Carroll failed to assert that he informed his attorney about the shirt, or about his theory that the physical condition of the shirt would rebut the allegations that he engaged in assaultive acts.

With regard to Carroll's other claims of inadequate investigation, the superior court noted that Carroll's attorney was not required to engage in investigative activities simply because Carroll wanted her to. Rather, it was Carroll's burden to show that no competent attorney would have failed to engage in these investigative activities. The superior court concluded that Carroll had failed to offer a prima facie case that Carroll's proposed investigative activities were needed — or that there was any reason to believe that these proposed investigative activities would have yielded information useful to Carroll's defense.

Carroll's claim that his attorney gave him mere "pro forma" representation, and that she improperly pressured Carroll to accept the plea bargain

As we have already described, Carroll's former attorney responded to his claims of "pro forma" representation and improper pressure to accept the plea bargain by declaring (1) that she met with Carroll several times to discuss the case, (2) that she reviewed all of the State's pre-trial discovery with Carroll, (3) that she talked to Carroll about the medical report evaluating the police officer's injuries, and (4) that she discussed possible defenses with Carroll, as well as possible outcomes if the case went to trial — including her concern that a jury would find Carroll guilty.

Carroll's affidavit did not directly rebut any of these assertions. Instead, Carroll stated that, during their discussions of the case, his attorney implied that she thought Carroll was lying about what happened. Carroll also stated that his attorney told him that she thought the State's offer was a good one, and that he would probably receive a longer sentence if he rejected the offer and went to trial.

Based on the content of these affidavits, the superior court properly concluded that Carroll failed to offer a prima facie case of ineffective assistance of counsel.

Carroll's claim that his attorney failed to adequately explain the consequences of the plea bargain

In Carroll's affidavit, he declared that he had no recollection of his attorney explaining what rights he would surrender by pleading guilty, and he further declared that his attorney had not discussed what probation would mean for him.

With regard to Carroll's understanding of the plea agreement and the rights that he would be giving up, the superior court noted that, regardless of the exact content of Carroll's discussions with his attorney, Carroll never asserted that he failed to understand any material aspect of the State's offer. The court also noted that when Carroll appeared in court to accept the plea agreement, the court discussed the agreement with him at some length, explaining in detail the rights he would be giving up, and also discussing the contours of Carroll's probation under the plea agreement.

Again, given this record, we agree with the superior court that Carroll failed to set forth a prima facie case of ineffective assistance of counsel.

Conclusion

The judgement of the superior court is AFFIRMED.